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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ASAHI METAL INDUSTRY CO., LTD.,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
REAL PARTY IN INTEREST),
Respondent.

On Writ of Certiorari to the
Supreme Court of California

BRIEF FOR CASSIAR MINING CORPORATION AS AMICUS CURIAE IN SUPPORT OF THE PETITIONER

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IN THE

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BRIEF FOR CASSIAR MINING CORPORATION AS AMICUS CURIAE IN SUPPORT OF THE PETITIONER

INTEREST OF AMICUS CURIAE

Cassiar Mining Corporation submits this brief as *amicus curiae*, urging reversal.[1]

Cassiar is a Canadian mining company located in Vancouver, British Columbia. Since 1953, Cassiar has mined

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[1] Pursuant to Rule 36.2, Cassiar has filed written consents of the parties to the submission of this brief as *amicus curiae*.

raw asbestos fibre in British Columbia, and has sold its fibre to customers in Canada, the United States, and many other countries. In 1984, approximately nine percent of Cassiar's sales were to customers in the United States.

The Cassiar mine produces a "long," high-grade asbestos fibre normally used as one of several raw materials in the manufacture of cement and textile products. Cassiar has always sold its fibre to a discrete, established customer base which manufactures these kinds of products. Some of Cassiar's customers produce finished products containing asbestos fibre (*e.g.*, cement pipe), while others make and sell only component parts made from asbestos fibre (*e.g.*, yarn, clutch facings, and brake linings) for use in the ultimate manufacture of finished products.

Since Cassiar's first sale of fibre in 1953, Cassiar's United States customers have been located in a limited number of states. In 1984, for example, Cassiar sold fibre to customers in only six states—California, Connecticut, New Jersey, North Carolina, Ohio, and Pennsylvania. Cassiar has always sold its fibre to its customers, in the United States and elsewhere, F.O.B. shipping points in Canada, pursuant to contracts performed by Cassiar wholly in Canada. Once the fibre is shipped, Cassiar has no control over, and does not participate in, the fibre's ultimate use, processing, or destination. Except in unusual, fortuitous circumstances, Cassiar has no knowledge of the identity or location of the companies who in turn purchase partially or fully-finished products containing Cassiar's fibre.

Apart from its sales to established United States customers in a limited number of states, Cassiar has not otherwise transacted any business in the United States. It has never registered to do business, owned any real or personal property, or maintained any place of business in any state. Cassiar has never had a marketing plan or

distribution system through which its fibre was sold in the United States, and has never sought to promote its product through advertising in the United States. With respect to those states to which it has not shipped fibre, Cassiar has had no contacts of any kind.

Beginning in 1983, Cassiar, together with numerous other defendants, has been named in products liability suits brought by school districts and other entities for property damage allegedly caused by the presence of asbestos-containing products in schools and other buildings. The defendants include not only manufacturers of asbestos products, but also asbestos mining companies such as Cassiar. The basis for the claims against the mining companies is that they supplied asbestos fibre that was one of the raw materials used to manufacture the finished products installed in the buildings, and that the miners breached a duty to warn the ultimate users of the finished products of the potential hazards of asbestos. The claims are not for personal injuries caused by asbestos, but rather for the cost of removing asbestos-containing products from the buildings.

Several of the suits against Cassiar have been brought in jurisdictions, such as Maryland, Michigan, Minnesota, Wisconsin, and the District of Columbia, where Cassiar has never made any sales or shipments of asbestos fibre, and hence has no connection with the forum. In those suits, the only basis for jurisdiction over Cassiar is the allegation that fibre mined by Cassiar is contained in the products at issue.[2]

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[2] To date, none of the plaintiffs has offered evidence to show the presence of Cassiar fibre in these products. Moreover, the products involved are primarily asbestos-spray ceilings and pipe-and-boiler insulation, and Cassiar fibre normally was used for cement and textile products. While it is therefore unlikely that Cassiar fibre will be shown to be present in the products at issue, Cassiar nevertheless must remain in the massive litigation through pretrial proceedings, unless its jurisdictional defenses can be sustained.

In the present case, the California Supreme Court held that Asahi, a Japanese manufacturer of tire valve assemblies, was subject to jurisdiction in California solely because its valve assemblies were incorporated in tire tubes manufactured in Taiwan by one of Asahi's customers, Cheng Shin, and subsequently sold by Cheng Shin through an affiliated distributor in California. Pet. App. B-3, C-13.[3] The California Supreme Court ruled that jurisdiction was proper because Asahi was "aware" that some of its customer's tire tubes "would end up throughout the United States and in California," Pet. App. at C-10 & n.4; no other contacts between Asahi and California were necessary. Pet. App. C-15.[4]

Like Asahi, Cassiar is "aware" that its customers seek to sell the finished products and component parts that they manufacture from Cassiar fibre and other raw materials wherever they are able to find buyers, and that both its U.S. and non-U.S. customers—and their customers in turn—may sell their products in the United States. Cassiar thus has an important interest in this case. This Court's decision may effectively determine whether Cassiar will be subject to jurisdiction in pending and future suits brought in states where it never sold asbestos fibre or had any other contact, but where the plaintiff alleges that the products at issue contain Cassiar fibre. In effect, the decision may determine whether there will remain any limits upon personal jurisdiction over suppliers of component parts or raw materials, such as Asahi and Cassiar, or whether such suppliers always will be subject to jurisdiction in every state where their customers, or their customers' customers, ultimately sell finished products.

[3] "Pet. App." refers to the appendix to the petition for a writ of certiorari.

[4] Although the suit began as a products liability action arising out of a motorcycle accident, the plaintiff has settled his claim. Thus, the issue presented relates only to California's jurisdiction over Cheng Shin's cross-complaint against Asahi. Pet. App. C-16 n.10.

SUMMARY OF ARGUMENT

This Court has repeatedly affirmed that a fundamental prerequisite for personal jurisdiction over a nonresident defendant is that the defendant have "*purposefully established* 'minimum contacts'" with the forum state. *Burger King Corp.* v. *Rudzewicz*, 105 S. Ct. 2174, 2183 (1985) (emphasis added). The requirement that the contacts be "purposeful" protects the due process liberty interest at the root of limitations on personal jurisdiction.

The decision of the California Supreme Court in this case should be reversed, because it sustains jurisdiction over a nonresident corporation without any evidence of purposeful contacts with the forum. The contacts relied upon by the California court are essentially those which this Court ruled insufficient in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980)—(1) foreseeability that the nonresident's product would end up in the forum state, and (2) substantial revenue from use of the product there. In effect, the California decision abandons all limitations upon personal jurisdiction over suppliers of component parts or raw materials, and ensures that such suppliers will be subject to jurisdiction in every state.

ARGUMENT

I. Due Process Requires That a Defendant Undertake Some Purposeful Activity Directed Toward the Forum State To Be Subject to Suit There.

Only last Term, this Court reaffirmed that the "constitutional touchstone" for personal jurisdiction over a nonresident defendant "remains whether the defendant *purposefully established* 'minimum contacts' in the forum State." *Burger King Corp.* v. *Rudzewicz*, 105 S. Ct. 2174, 2183 (1985) (emphasis added) (citing *International Shoe*

Co. v. *Washington*, 326 U.S. 310, 316 (1945)). That a defendant's contacts with the forum must be "purposeful" to justify jurisdiction is a recurrent theme in this Court's decisions. Thus, in *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958), this Court declared that, in order to sustain jurisdiction over a nonresident defendant, "it is essential in each case that there be some act by which the defendant *purposefully avails* itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." (Emphasis added.)

A corollary of the requirement that a defendant's "efforts [be] 'purposefully directed' toward residents of another State" is that jurisdiction may not be predicated solely upon the " 'unilateral activity of another party or a third person' "; instead, "the defendant *himself* [must] create a 'substantial connection' with the forum State." *Burger King*, *supra*, 105 S. Ct. at 2183-84 (citations omitted) (emphasis in original). See also Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. Ill. L.F. 533, 549 (the "essence" of the purposefulness requirement "is that the defendant must have taken voluntary action calculated to have an effect in the forum State"). The requirement of purposefulness also ensures that jurisdiction is not founded on contacts that are "random," "fortuitous," or "attenuated." *Burger King*, *supra*, 105 S. Ct. at 2183.

As this Court has recognized, the constitutional limits on personal jurisdiction arise out of the liberty interest protected by the due process clause. *Id.* at 2182 n.13; *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-03 & n.10 (1982).[5] The

[5] This Court has also recognized that limits on personal jurisdiction serve federalism by restricting the power of the individual states. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980). In recent decisions, however, this Court has emphasized that these limitations " 'must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause' rather than as a function 'of federalism concerns.' " *Burger King Corp.* v. *Rudzewicz*, 105 S. Ct. 2174, 2182 n.13 (1985) (quoting *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-03 n.10 (1982)).

requirement that a defendant's contacts with the forum must be purposeful, *i.e.*, that the defendant *himself* must do something directed toward the forum, protects liberty interests in two ways. First, the purposefulness requirement protects the defendant from the inherent unfairness in being "subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties or relations.' " *Burger King*, *supra*, 105 S. Ct. at 2181-82 (citation omitted). See also Currie, *supra*, at 534 (limitations on personal jurisdiction protect defendant against "the unfairness * * * of being compelled to defend himself in a court of a State with which he has no relevant connection").

Second, the purposeful contacts standard "requir[es] that individuals have 'fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign.' " *Burger King*, *supra*, 105 S. Ct. at 2182 (quoting *Shaffer* v. *Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring in the judgment)). By requiring that a "defendant's conduct and connection with the forum State" be such "that he should reasonably anticipate being haled into court there," the requirement of purposeful minimum contacts promotes liberty interests by "giv[ing] a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980). Where a nonresident has purposeful contacts with the forum state, "it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the

risks are too great, severing its connection with the State." *Id.*

Applying these principles in *World-Wide Volkswagen*, *supra*, this Court held that jurisdiction could not be imposed in Oklahoma over an automobile dealer and an importer that did business in the New York area solely because the car they sold caused injury in Oklahoma. This Court reasoned that the foreseeability that the car might cause injury in Oklahoma was not sufficient for jurisdiction: "foreseeability," *i.e.*, "the mere likelihood that a product will find its way into the forum State," "has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." *Id.* at 295-97. Also insufficient was the fact that the dealer and importer earned "substantial revenue" from the use of cars in Oklahoma. *Id.* at 298-99. Jurisdiction was unwarranted, because the requirement of purposefulness was not met; there was no evidence that the defendants had made any "efforts * * * to serve, directly or indirectly, the market for [their] product in [Oklahoma]." *Id.* at 297.

As we show below, in this case, as in *World-Wide Volkswagen*, the defendant lacks the purposeful minimum contacts with the forum required for jurisdiction by the due process clause. The requirement of purposefulness is essential to jurisdiction, because it protects the liberty interest that is at the root of limitations on personal jurisdiction.

II. Because the Defendant Here Had No Purposeful Contacts with California, Jurisdiction May Not Be Imposed.

The California Supreme Court held Asahi subject to jurisdiction on the basis of two findings regarding its relations to California. First, tire valve assemblies manufactured by Asahi in Japan were incorporated into a "substantial" number of tire tubes manufactured by

Cheng Shin in Taiwan and ultimately sold to customers in California. Pet. App. C-10 to -11. Second, Asahi was "aware" that some of the valves it sold to Cheng Shin "would end up throughout the United States and in California." Pet. App. C-10 & n.4. The California court held that the "purposeful availment" requirement was met because Asahi, a components parts manufacturer, "intentionally [sold] its products to another manufacturer, knowing that the component parts [would] be incorporated into finished products sold in [California]." Pet. App. C-13.

Despite its recitation of the purposefulness requirement, the California decision essentially abandons this fundamental requirement for personal jurisdiction over a nonresident corporation. As set forth in Part I, the "essence" of the purposefulness requirement "is that the defendant must have taken voluntary action calculated to have an effect in the forum State." Currie, *supra*, at 549. No such "voluntary action" by Asahi towards California was identified, apart from the sale of tire valves to Cheng Shin. Thus, the "contacts" with California by Asahi relied on by the California Supreme Court were equivalent to those held insufficient in *World-Wide Volkswagen*. In both cases, the defendants' only contacts with the forum were the "foreseeability" that their products would end up in the state, coupled with "substantial revenue" from the use of the product there. *World-Wide Volkswagen*, *supra*, 444 U.S. at 295-99.

The California court attempted to distinguish *World-Wide Volkswagen* on the ground that there the product was merely *used* in Oklahoma, whereas, in the present case, the component part was sold in California as part of a finished product. Pet. App. at C-9 & n.3. The flaw in this distinction, however, is that both cases share an absence of any purposeful activity directed by the defendant toward the forum. In both cases, the product reached the forum state solely due to the unilateral activity of others—the defendants' customers. In each case,

the destination of the product, rather than the actions of the defendant, determined the forum, a result which *World-Wide Volkswagen* rejected. See 444 U.S. at 296 (if jurisdiction were sustained, "[e]very seller of chattels would in effect appoint the chattel his agent for service of process").

In upholding jurisdiction in this case, the California court placed substantial reliance on the dictum of *World-Wide Volkswagen* that "[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." 444 U.S. at 297-98. The context of this statement makes clear, however, that jurisdiction over a nonresident corporation under a "stream of commerce" theory is proper only if the corporation has " 'purposefully avail[ed] itself of the privilege of conducting activities within the forum State,' " so that "it has clear notice that it is subject to suit there." *Id.* at 297 (quoting *Hanson* v. *Denckla*, *supra*, 357 U.S. at 253).[6]

[6] The California court also relied on *Gray* v. *American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961), which this Court cited in *World-Wide Volkswagen*, *supra*, 444 U.S. at 298, in connection with the "stream of commerce" doctrine. Pet. App. C-8 to -9. *Gray* upheld jurisdiction over a nonresident component-parts manufacturer that made no direct sales to customers in the forum. 176 N.E.2d at 766-67. The jurisdictional theory adopted in *Gray*, however, is inconsistent with the reasoning of *World-Wide Volkswagen*. *Gray* held that jurisdiction was proper over any corporation that "sell[s] its products for ultimate *use* in [the forum] State." 176 N.E.2d at 766 (emphasis added). Under *World-Wide Volkswagen*, however, the foreseeable *use* of a product in the state is insufficient for jurisdiction, as the California Supreme Court appeared to recognize. Pet. App. C-8 n.2 ("It is doubtful that the mere expectation of use in the forum is sufficient to establish minimum contacts under *World-Wide Volkswagen*."). Thus, this Court's reference to *Gray* in *World-Wide Volkswagen* cannot be construed as giving unqualified approval to the broad "stream of commerce" doctrine expressed in *Gray*.

In short, to apply the "stream of commerce" theory consistently with the purposefulness requirement, as required by *World-Wide Volkswagen*, there must be evidence that the nonresident corporation has undertaken some voluntary "efforts * * * to serve, directly or indirectly, the market for its product" in the forum state. *Id.* at 297. This requirement is satisfied when the manufacturer of a finished product ships the product directly into the forum state, or distributes the product there through intermediaries acting in a defined chain of distribution. Indeed, a primary purpose of the stream of commerce theory is to prevent a manufacturer from insulating itself from jurisdiction "by using an intermediary or by professing ignorance of the ultimate destination of its products." *DeJames* v. *Magnificence Carriers, Inc.*, 654 F.2d 280, 285 (3d Cir. 1981). The purposefulness requirement might also be satisfied where a manufacturer designs a component part specifically for use in the customer's finished product, and thereby directs his efforts toward the customer's market.[7] Similarly, marketing a product through an exclusive distributor with authority for sales in a certain geographic area,[8] designing a product to meet the safety standards applicable in the

[7] *E.g.*, *Rockwell Internat'l Corp.* v. *Costruzioni Aeronautiche Giovanni Agusta*, 553 F. Supp. 328, 330-32 (E.D. Pa. 1982) (jurisdiction proper over ball-bearing manufacturer in state where customer's helicopters were sold because manufacturer worked with customer to custom-design ball bearings and intended them to be "an inseparable part of the marketing plan" for the finished product).

[8] *E.g.*, *Stabilisierungsfonds Fur Wein* v. *Kaiser Stuhl Wine Distribs.*, 647 F.2d 200, 203 (D.C. Cir. 1981) (foreign winery subject to jurisdiction in the District of Columbia, because it sold its wine to a New York importer "with exclusive authority to distribute the wine throughout the eastern part of the United States"); *Oswalt* v. *Scripto, Inc.*, 616 F.2d 191, 198 (5th Cir. 1980) (Japanese lighter manufacturer subject to jurisdiction in Texas, because it sold millions of lighters each year to exclusive U.S. distributor who serviced "national retail outlets," including several in Texas).

customer's markets,[9] manufacturing a product specifically for sale at the customer's retail outlets,[10] or taking part in promoting the customer's product [11] could justify assertion of jurisdiction. In such cases, asserting jurisdiction over the manufacturer based upon the customer's markets might be proper, because the manufacturer could be said to have "*himself* create[d] a 'substantial connection' with the forum." *Burger King*, *supra*, 105 S. Ct. at 2184 (emphasis in original).

The purposefulness requirement might also be satisfied where a manufacturer sells such a large percentage of its products to a customer that it essentially has adopted that customer's markets as its own. This point was implicitly recognized by the dissenting opinion below, which contended that Asahi received so little revenue from Cheng Shin's California market that Asahi could not have "intended to serve the California market indirectly." Pet. App. C-20.

Furthermore, if Asahi's tire valves were a finished product, rather than a component part, the distribution

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[9] *E.g.*, *Volkswagenwerk, A.G.* v. *Klippan, GmbH*, 611 P.2d 498, 500-01 (Alas. 1980) (manufacturer of seat belt assembly subject to jurisdiction in Alaska, because cars containing assembly sold there and manufacturer designed its assembly to meet applicable safety standards, labeling the seat belt assembly as "approved for sale in all states").

[10] *E.g.*, *Noel* v. *S.S. Kresge Co.*, 669 F.2d 1150, 1152-53 (6th Cir. 1982) (pliers manufacturer subject to jurisdiction in state where K-Mart sold pliers, since manufacturer mounted pliers on cards which stated that pliers "had been manufactured in Korea for K-Mart").

[11] *E.g.*, *Poyner* v. *Erma Werke GMBH*, 618 F.2d 1186, 1191 (6th Cir. 1980) (German gun manufacturer held subject to jurisdiction in Kentucky, because it had an exclusive U.S. distributor active in that state and also was "'a strong backstage promoter of its products throughout the United States'"); *United States* v. *Toyota Motor Corp.*, 561 F. Supp. 354, 359 (C.D. Cal. 1983) (jurisdiction proper over Japanese automobile manufacturer in state where distributor sold its cars and where manufacturer knew about and "actively promoted those sales").

chain might be sufficiently short that a court could reasonably conclude that Asahi was so closely tied to its customer's markets that it had "purposefully availed" itself of those markets. For example, in *Nelson* v. *Park Industries*, 717 F.2d 1120, 1126-27 (7th Cir. 1983), a Hong Kong manufacturer of shirts was held subject to jurisdiction in Wisconsin because it sold the shirts, through an importer, to Woolworth, a retailer with a "national retail market" that included Wisconsin. If, however, the nonresident defendant in *Nelson* instead had been a producer of the cotton or thread used in the shirts, rather than of the shirts themselves, it would have been too far removed from Woolworth's markets to have had any "purposeful" connection with them. Similarly, the connection between Asahi or Cassiar and the markets for their customers' finished products—in the absence of any further involvement by Asahi or Cassiar in those markets—is too attenuated to satisfy the purposefulness requirement essential for personal jurisdiction.[12]

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[12] At times in its opinion, the California Supreme Court implies that Asahi knew of Cheng Shin's distribution system in the United States and of Asahi's own indirect business with California through that distribution system. *E.g.*, Pet. App. C-11 ("Asahi was aware of [Cheng Shin's] distribution system's operation, and it knew that it would benefit economically from the sale in California of products incorporating its components."). The evidence, however, on which the California court rested this finding of Asahi's knowledge—the declaration of a Cheng Shin manager that Asahi knew that the valves it sold to Cheng Shin "would end up throughout the United States and in California," Pet. App. C-10 n.4—is weak. At best, this declaration shows only that it was foreseeable to Asahi that some of its valves would end up in California, and does not show that Asahi "purposefully" used Cheng Shin's distribution system to indirectly market its products in California. Thus, if this Court should hold that knowledge concerning, and substantial sales through, a customer's distribution system is sufficient to impose jurisdiction over a manufacturer in a state included in that distribution system, it should require a greater evidentiary showing of knowledge than was presented in

A recent decision of the Fifth Circuit, *Bean Dredging Corp.* v. *Dredge Technology Corp.*, 744 F.2d 1081 (5th Cir. 1984), illustrates the way in which the purposefulness requirement is essentially abandoned when personal jurisdiction over a component part manufacturer is founded solely on the sale of a finished product containing the component, together with a general "awareness" that its customers might market finished products in the state. In *Bean Dredging*, a Washington manufacturer sold steel castings by mail to a customer's plant in California that made cylinders. The cylinders were eventually used as part of a dredge constructed by another company in Louisiana. The castings manufacturer had no contacts with Louisiana. At a deposition, however, the manufacturer's president indicated "an awareness" that its castings, "once they entered the stream of commerce, might go virtually anywhere." *Id.* at 1082. On these facts, the Fifth Circuit held that the due process requirements for personal jurisdiction were met, citing the "stream of commerce" language in *World-Wide Volkswagen*. 744 F.2d at 1083-85. As this result demonstrates, however, an extension of the "stream of commerce" theory to impose jurisdiction over every member of a distribution chain in every forum where the finished product is ultimately sold would in essence abandon any requirement of purposefulness, and allow jurisdiction where the defendant's contacts with the forum are, in every sense, attenuated.[13]

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this case. *Cf. Montalbano* v. *Easco Hand Tools, Inc.*, 766 F.2d 737, 743 (2d Cir. 1985) (remanding for further development of the record concerning the defendant's knowledge of "the nature and extent of [its customer's] distribution system" before deciding whether defendant may be subject to jurisdiction in state served by that system).

[13] Other courts have recognized, contrary to *Bean Dredging*, that to sustain jurisdiction over a nonresident manufacturer simply because a product was ultimately sold in the forum violates due process due to the absence of purposefulness. *E.g., Hutson* v. *Fehr Bros.*, 584 F.2d 833, 837 (8th Cir. 1978) (en banc) (jurisdiction may not be imposed in Arkansas over nonresident defendant which repackaged a chain eventually sold in Arkansas because defendant "did not consciously solicit or purposefully avail itself of the privilege to conduct business in the forum state"); *Humble* v. *Toyota Motor Co.*, 578 F. Supp. 530, 532 (N.D. Iowa 1982), *aff'd*, 727 F.2d 709 (8th Cir. 1984) (no jurisdiction over component part manufacturer on ground that finished product was sold in state, because contacts between component part manufacturer and forum are "too fortuitous and tenuous"); *Shaw* v. *American Cyanamid Co.*, 534 F. Supp. 527, 531-33 (D. Conn. 1982) (jurisdiction may not be imposed over distributor of formaldehyde on ground that products containing formaldehyde were eventually sold in state, since formaldehyde was brought into state "solely because of the unilateral action of another party"); *Martinez* v. *American Standard*, 91 A.D.2d 652, 457 N.Y.S.2d 97, 98-99 (1982), *aff'd mem.*, 60 N.Y.2d 873, 458 N.E.2d 826 (1983) (manufacturer of terminal pins incorporated in compressor used in air conditioner not subject to jurisdiction in New York, because no evidence that terminal pin manufacturer knew where compressors "were destined" or that manufacturer "was attempting to reach a New York market"); *Phoenix Trimming, Inc.* v. *Mowday*, 431 So. 2d 198, 199-200, 202 (Fla. Dist. Ct. App. 1983) (jurisdiction may not be sustained over manufacturer of synthetic fiber used in hot air balloon which caused injury in Florida without evidence that manufacturer engaged in "continuous, systematic activity through others in an effort to serve the Florida market").

Similarly, two courts have ruled that, due to the absence of purposefulness, personal jurisdiction may not be asserted over Cassiar solely on the basis that products containing Cassiar fibre were alleged to be present in the state. *Weick* v. *Maremont Corp.*, No. 7-70553, slip op. at 5 (E.D. Mich. May 31, 1979); *Dunn* v. *Armstrong World Indus.*, No. 82-244-895 NP (Mich. Cir. Ct. April 15, 1983).

Application of the stream of commerce theory to sustain jurisdiction in this case would thus undermine the due process interests in fairness and predictability that are served by the purposefulness requirement. Fairness would be sacrificed, because suppliers such as Cassiar and Asahi would be subject to the binding judgment of a state where they had no ties and had done nothing to involve themselves in the sale of their customers'—or

their customers' customers—products. Predictability also would be undermined, because such suppliers would lose control over where they were subject to suit, and instead could be sued wherever their customers decided to sell their own finished products. Indeed, the only predictability that would remain is that such suppliers might be subject to jurisdiction in every state in the nation, regardless whether they had undertaken any voluntary action in relation to the forum. See *Ford Motor Co.* v. *Atwood Vacuum Machine Co.*, 392 So. 2d 1305, 1314 (Fla. 1981) (Sundberg, C.J., dissenting).

In *World-Wide Volkswagen*, this Court stated that the due process limitations on personal jurisdiction serve to assure that a defendant "can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." 444 U.S. at 297. See also *Burger King*, *supra*, 105 S.Ct. at 2185 n.17. Although it echoed this language, Pet. App. C-6, the California Supreme Court's decision in this case effectively removes any ability by suppliers of raw materials or component parts to limit where they will be subject to jurisdiction. If any meaningful limits on personal jurisdiction are to remain, the decision of the California Supreme Court should be reversed.

CONCLUSION

For the reasons stated above and in the Brief for the Petitioner, *amicus* Cassiar urges the Court to reverse the decision below.

Respectfully submitted,

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